

N.D.A.G. Letter to Syverson (March 18, 1988)

March 18, 1988

Mr. Gayle Syverson
Deputy Auditor
Office of State Auditor
State Capitol
Bismarck, ND 58505

Dear Mr. Syverson:

Thank you for your letter of March 9, 1988, posing questions that have occurred as a result of a recent audit of a county.

Your first question is whether a county may purchase a vehicle using monies from the corrections center's fund. N.D.C.C. § 57-15-06.6 authorizes the board of county commissioners to levy an annual tax for the purpose of constructing, equipping, operating, and maintaining regional and county corrections centers. According to your letter, the county in question has purchased a vehicle using monies from this fund upon the premise that the vehicle would be used for the transportation of prisoners to and from the corrections center in question.

The issue of whether a particular use of a specialized source of monies is in compliance with the restrictions as to the use of those monies is a question of fact rather than of law. There are a number of letters and opinions of this office indicating the inability of the Attorney General to determine questions of fact rather than of law. These previous letters and opinions responded to requests to review the propriety of certain uses of specialized tax levy monies.

Your question as to the propriety of the use of N.D.C.C. § 57-15-06.6 monies for the purchase of a vehicle is a question of fact rather than of law. As such, I must continue the policy of this office to not issue an opinion addressing such a question. Arguments can be made supporting and opposing the purchase in this matter. I must defer to the judgment of the board of county commissioners who made this decision based upon the facts presented to them.

Your second question concerns the apparent conflict between two statutes. N.D.C.C. § 11-23-07 allows the transfer of monies from one county fund to another where there are insufficient monies in the one fund to meet the expenditures required by law. N.D.C.C. § 57-15-28 allows a county to establish an emergency fund to be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry of a court judgment for damages against the county. The question is whether the county may utilize N.D.C.C. § 11-23-07 in transferring monies from the emergency fund to another

fund resulting in the use of emergency fund monies for nonemergency purposes.

A similar question was presented in 1981 and resulted in the issuance of Attorney General's Opinion 81-63 (1981 N.D. Op. Att'y Gen. 178). A copy of this opinion is attached. Although this 1981 Attorney General's Opinion does not concern the emergency fund, it does concern expenses of the county veterans' service officer which is a specialized fund similar to that of the emergency fund.

In this opinion, this office concluded that the transfer authority of N.D.C.C. § 11-23-07 does apply to these specialized funds only if the expenditures from the insufficient fund are actually required by law to be made as opposed to being authorized by law to be made. I believe the same conclusion would apply to transfers out of the emergency fund pursuant to N.D.C.C. § 11-23-07.

These statutes do not conflict. Transfers may occur from the emergency fund to another fund pursuant to N.D.C.C. § 11-23-07 only if the appropriation for the latter fund is insufficient to meet the expenditures required by law.

Finally, you inquire as to the use of the emergency fund for the replacement of equipment damaged in an accident or to replace equipment needing major repairs. Again, this is essentially a question of fact which cannot be addressed by a legal opinion from this office. Instead, we must defer to the factfinders in this instance, namely, the county commissioners.

Your letter does inquire as to whether road equipment may be purchased with emergency funds. N.D.C.C. § 57-15-28 specifically prohibits the use of the emergency fund for the purchase of road equipment.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure